

From: [Joseph Lee Matalon](#)
To: psmith@guzovllc.com
Cc: [Barbara Shweky](#)
Subject: Re: Thor v Medmen
Date: Wednesday, September 28, 2022 5:42:54 PM

You mean the pending action?

On Sep 28, 2022, at 3:42 PM, psmith@guzovllc.com wrote:

[EXTERNAL]

But you can't dismiss the NY action without defendants' consent or a court order.

Check....

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From: Joseph Lee Matalon <jlatalon@wmllp.com>
Sent: Wednesday, September 28, 2022 3:19 PM
To: psmith@guzovllc.com
Cc: Barbara Shweky <BShweky@wmllp.com>
Subject: Thor v Medmen

Phil,

I enjoyed our chat. I did a little research, as I am sure you will too.

First, my recollection from Civ Pro was correct. Under 28 U.S.C. 1441(b)(2), an action otherwise removable on diversity grounds

"may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the [State](#) in which such action is brought." So my inclination is to voluntarily dismiss the federal action without prejudice and bring the action in a state court where one of the defendants is located. As I mentioned, my preference would be to bring the action in NY, primarily to eliminate a local-counsel layer. You could probably remove such an action, so I would bring it in NY only if we have an agreement not to remove.

Second, I don't think an illegality defense would have much traction in state court. In fact, both Illinois and California have statutes that expressly eliminate the illegality defense in cannabis cases.

Illinois:

Sec. 55-75. Contracts enforceable. It is the public policy of this State that contracts related to the operation of a lawful cannabis business establishment under this Act are enforceable. It is the public policy of this State that no contract entered into by a lawful cannabis business establishment or its agents on behalf of a cannabis business establishment, or by those who allow property to be used by a cannabis business establishment, shall be unenforceable on the basis that cultivating, obtaining, manufacturing, processing, distributing, dispensing, transporting, selling, possessing, or using cannabis or hemp is prohibited by federal law.
(Source: P.A. 101-27, eff. 6-25-19.)

California:

(b) Notwithstanding any law, including, but not limited to, [Sections 1550, 1667](#), and [1668 and federal law](#), commercial activity relating to medicinal cannabis or adult-use cannabis conducted in compliance with California law and any applicable local standards, requirements, and regulations shall be deemed to be all of the following:

- (1) A lawful object of a contract.
- (2) Not contrary to, an express provision of law, any policy of express law, or good morals.
- (3) Not against public policy.

Please revert soon to further our discussions.

Best,

Joe

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